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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,314	04/10/2001	Christophe Dupont	112701-239	4353
29157	7590	09/20/2006	EXAMINER	
BELL, BOYD & LLOYD LLC			WEINSTEIN, STEVEN L	
P. O. BOX 1135			ART UNIT	PAPER NUMBER
CHICAGO, IL 60690-1135			1761	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary	Application No.	Applicant(s)	
	09/833,314	DUPONT ET AL.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1761

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba et al (Ep '252) in view of Vickers (GB '760) and May et al (WO'219), or vice versa, i.e., Vickers in view of Ohba et al and May et al both further in view of Quaker Oats (GB '351), and Bechtel ('847) further in view of Gutmann ('199), Froebel et al (GB '125), Zitin ('095), Dodge et al ('712) and), further in view, Henkel (GB, '634), Mandanas (WO '606), Routh ('901), McMahan (GB '351), Errass (Ep '046), Hillebrand (Austral. '797/96), QP Corp (Jp '677) and QP Corp (Jp '174), further in view of applicants admission of the prior art, further in view of Diaz(5,518,746), Hoashi (JP 62-104566), Honma et al (JP59-159758), and Sonoya (JP57-12987), for the reasons given in the Office actions mailed 1/4/05, 2/9/04, 6/3/03, 11/14/02, and 3/30/06.

All of applicants remarks filed 6/28/06 have been fully and carefully considered but are not found to be convincing. The remarks, many of which have been previously made, argue each reference separately, as to what each reference shows or does not show. The remarks do not address the art taken as a whole as to what the art taken as a whole teaches. Although it would appear that no one reference specifically teaches the recited composition with the recited shape in a can, this issue only addresses novelty under 35USC102, and not obviousness under 35USC103. The fact is that the art taken as a whole teaches that it was conventional to provide composite, multiphased pet foods in a can, that it was conventional to provide composite, multiphased foods having the recited shape, that it was conventional to provide composite, multiphased pet foods in a can wherein one phase surrounds a second phase, and that it was conventional to provide composite, multiphased foods with the recited shape in a can. A

Art Unit: 1761

secondary reference which teaches a composite, multiphased food in a can does not have to teach the specific recited composite, multiphased food composition for the rejection to be proper when the specific composite, multiphased food composition is already taught in another reference. The remarks also urge that one or more of the secondary references do not show, for example, the recited shape of the product in a can or the recited shape in the recited composition. The remarks are replete with these kinds of urgings wherein it is urged that a particular reference does not teach one or more recitations which recitations are already shown by another reference relied upon. The fact is, there appears to be nothing magic about putting a multiphased pet food of specific structure in a can, especially when it was conventional to place multiphased pet foods in cans, it was conventional to put other multiphased foods having the same specific structure in cans, it was conventional to provide the specific multiphase composition in cans, and it was conventional to generally employ the specific structure in multiphased foods in general. As noted several times in previous Office actions, the urgings rely on a specific, notoriously conventional multiphased structure, design or pattern, and achieve no new or unexpected result. The specification urges there is a need for a pet food with "new and interesting appearances to simulate consumer interest" (the pet or its owner?), but the art taken as a whole clearly evidences the fact that the appearance is not new and the art taken as a whole recognizes that appearance is advantageous in foods including pet foods.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1761

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
9/15/06